

ENGROSSED COPY

(RECREATIONAL USES OF NATURALLY
FLOWING STREAMS)
1971
GENERAL SESSION

H.B. No. 79

By Messrs. Judd, Grundfossen, Garr,
Woodmansee, Fisher,
and Pace

AN ACT AMENDING SECTION 73-3-8, UTAH CODE ANNOTATED 1953, AS AMENDED BY CHAPTER 137, LAWS OF UTAH 1959, AND ENACTING SECTION 73-3-29, UTAH CODE ANNOTATED 1953, RELATING TO THE PROTECTION OF PUBLIC RECREATION AND NATURAL STREAM ENVIRONMENT; PROVIDING THE STATE ENGINEER WITH CONTROL OVER RELOCATION, ALTERATION OR CHANGE OF NATURAL STREAMS THEIR CHANNELS, BEDS OR BANKS ; AND PROTECTING THE DIVISION OF WATER RIGHTS AGAINST COST INCURRED BY APPLICANT SEEKING TO RELOCATE, ALTER OR CHANGE A NATURAL STREAM.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 73-3-8, Utah Code Annotated 1953, as amended by Chapter 137, Laws of Utah 1959, is amended to read:

73-3-8. It shall be the duty of the state engineer to approve an application if: (1) There is unappropriated water in the proposed source; (2) The proposed use will not impair existing rights, or interfere with the more beneficial use of the water; (3) The proposed plan is physically and economically feasible unless the application is filed by the United States Bureau of Reclamation and would not prove detrimental to the public welfare; and (4) The applicant has the financial ability to complete the proposed works and the application was filed in good faith and not for purposes of speculation or monopoly; provided, that where the state engineer, because of information in his possession obtained either by his own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development or manufacturing,

or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, it shall be his duty to withhold his approval or rejection of the application until he shall have investigated the matter. If an application does not meet the requirements of this section, it shall be rejected.

Before the approval of any application for the appropriations of water from navigable lakes or streams of the state which contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state of Utah; provided that approval of any such application shall be revoked in the event of failure of the applicant to comply with the terms of his royalty contract.

Section 2. Section 73-3-29, Utah Code Annotated 1953, is enacted to read:

73-3-29. (1) It shall be unlawful for any state agency, county, city, corporation or person in any manner to relocate any natural stream channel or to alter or change the beds and banks of any natural stream for any purpose other than to divert, conserve and store water for beneficial uses or to prevent erosion or flooding without first obtaining the written approval of the state engineer. Provided, however, that in an emergency involving immediate, potential or actual injury or damage to person or property, nothing herein contained shall be construed to prevent the taking of steps reasonably necessary to alleviate or mitigate any injury or damage to person or property.

(2) All applications to relocate any natural stream channel or to alter or change the beds and banks of any natural stream for purposes other than those specifically excluded in subsection (1) of this section, shall be in writing and shall contain the name and address of the applicant, and a complete and detailed statement of the location, nature and type of relocation, alteration or change, the methods to be employed, and the purposes thereof, and any additional information

as the state engineer may determine necessary, including, but not limited to, plans and specifications of the proposed construction of works.

(3) The state engineer shall, without undue delay, conduct investigations as may be reasonably necessary to determine whether the proposed relocation, alteration or change will impair vested water rights, or will unreasonably affect any recreational use or the natural stream environment, or will endanger aquatic wild life. If the proposed relocation, alteration or change will not impair vested water rights or will not unreasonably or unnecessarily adversely affect any public recreational use or the natural stream environment, or endanger the aquatic wild life, the application shall be approved. Otherwise, the application shall be rejected. Provided, however, the state engineer may approve the application, in whole or in part, or upon any reasonable terms and recommendation that will protect vested water rights and/or any public recreational use, the natural stream environment and the aquatic wild life.

(4) All costs incurred by the applicant including any incurred from complying with the terms and recommendations made by the state engineer, shall not be reimbursable upon the division of water rights, whether resulting from the terms imposed or recommendation made by the state engineer or from any terms or recommendation made following a public hearing.

(5) The decision of the state engineer shall be subject to sections 73-3-14 and 73-3-15.

Any officer or employee of any state agency, county, city, or corporation, or any person who shall violate the provisions hereof, except as specifically excluded hereinabove, shall be guilty of a misdemeanor.